

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITIOIN NO. 1979 OF 2005

Office Notes, Office Court's or Judge's orders
Memoranda of Coram,
appearances, Court's
orders or directions
and Registrar's orders

Mr. P.D. Dalvi for the petitioner.

Mr. Rahul Wadekar for respondents 1 to 3.

CORAM : ANOOP V. MOHTA, J.

DATE : 28.11.2005

. Heard. The challenge is made in the present petition in respect of the order dated 15/10/2004 below Exh.18 in R.C.S. No. 135 of 2002, whereby, the Court has ordered that the issue regarding tenancy under Order 14 Rule 5 of Civil Procedure Code need not be framed. Admittedly, the present suit has been filed on the basis of redemption of mortgage. In the written statement, a

specific plea regarding the tenancy has been raised. The learned Judge, based on the application filed by the plaintiff for not framing the issue, allowed the prayer.

2. Heard the advocates appearing for the parties. As rightly pointed out by he learned Counsel appearing for the petitioner that there is no such procedure available under the Civil Procedure Code, for such an application for not framing the issues. In the present case about the tenancy. The basic principle of framing of issue is very clear, based on the pleadings, as well as, material available on the record, i.e. The averments made by a party and denied by the others. This itself is always foundation for framing issue. There is no question of moving such application by the parties, specially by the plaintiff, that such issues should not be framed. There is no

doubt that the parties at the time of hearing of framing of the issues may make out case that there is no case made out by the parties to frame such issues. Considering the averments made in the plaint and as denied by the other parties in the written statement, the requirement is that the Court should consider whether there is a denial or an acceptance of the pleadings. The moment there is a denial to the pleadings, raised, it is necessary for the Court to frame the issues.

3. A decision in (Pandu Dhondi Yerudkar Vs. Ananda Krishna Patil) (AIR 1975 Bombay 52) was the basis for granting application filed by the plaintiff. There was observation that the pleadings were vague and therefore, in absence of particular pleadings, it is not necessary for the Court to frame the issue. After going through the written statement as well as rival contentions raised by the parties, it appears that

there are pleadings raised about the tenancy, as contemplated under the Bombay Tenancy and Agricultural Lands Act (BTAL Act). The reliance on section 25-A of the BTAL Act cannot be overlooked. Therefore, the case of Pandu Yerudakar (Supra) as cited is distinct on the facts. The learned Counsel appearing for the respondents has also relied on (Kishan Ramchandra Kumbhar and others V. Dr. Kashinath Bandu Teli and others) (2003 (3) ALL MR. 817). In that case after considering the provisions of BTAL Act the Court has observed that this Act being a social welfare legislation interpretation ought to be to further the legislative intention of protecting the tenants and or deemed tenants. Without going to the controversy of the merits of the matter including in consistency and or contrary statements made in the written statement, I am of the view that at this stage, it is necessary that the Court should frame the issues on all

:5:

aspects based on the pleadings available.
In the present case application as
granted is not correct.

4. Taking all this into account, the
present writ petition is allowed, the
order dated 16/10/2004 is quashed and set
aside and an application at Exh.18 is
rejected.

(ANOO P V.MOHTA, J.]